March 10, 2016

Cynthia Giles, Assistant Administrator
United States Environmental Protection Agency
Office of Enforcement and Compliance Assurance
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 2201A
Washington, DC 20460

Re: January 20, 2016 Pesticide Exposure Incident / Kekaha, Hawai'i

Dear Administrator Giles:

On January 20, 2016, fieldworker employees of Syngenta Seeds, Inc. were exposed to pesticides and taken to Kaua'i Veterans Memorial Hospital. Earthjustice, Farmworker Justice, Pesticide Action Network, Hawai'i Alliance for Progressive Action, Hawai'i SEED, Farmworker Association of Florida, and The MOM Hui are reporting the incident to your office and, for the reasons discussed below, ask that you ensure the incident is fully and properly investigated and that appropriate enforcement action is taken. We also ask that EPA consider this additional on-the-ground evidence as it moves forward with regulatory action on chlorpyrifos.

The details of this incident are far from clear. The newspaper accounts—all apparently based on a single statement provided by Syngenta station manager Josh Uyehara and printed without further investigation—reported that these employees walked into a field that had been sprayed with the neurotoxic organophosphate pesticide chlorpyrifos. According to these reports, the employees entered the field four hours before the end of the label-directed 24-hour restricted entry interval.

Label directions for chlorpyrifos formulations require Syngenta to notify workers of the application by warning them both orally and by posting warning signs at entrances to treated areas. We have reason to believe this particular field had not been properly posted, and do not know whether Syngenta informed the workers orally. We also do not know whether Syngenta had directed the employees to enter the field at that time. We have yet to learn whether these employees or others were familiar with labeling requirements related to human hazards or precautions, first aid, symptoms of poisoning, and personal protective equipment specified for early entry. We do not know whether the workers were wearing the requisite personal protective equipment, and if not, whether that is because Syngenta did not make such equipment available, or did not advise the workers that it was needed. We do not know the workers' languages or fluency, or the language in which any provided warnings were communicated. Nor has information been forthcoming regarding the amount of pesticide

applied or the conditions at the time of application. One might well wonder whether employees who needed hospitalization could safely have entered the fields had they simply waited only four more hours.

We do not know exactly how many employees were affected, or how many were taken to the hospital; the hospital's records state that "10-12 Syngenta employees were being brought in." It appears from the hospital reports that Syngenta failed to transport any of these employees by ambulance. They also disclose that, although hospital decontamination protocol requires "20 minutes of soap, scrubbing, shower," and the pesticide label requires 10-15 minutes of rinsing, Syngenta had provided showers for only "five to seven minutes." We do not know whether Syngenta violated any other aspect of EPA's Worker Protection Standard. Beth Tokioka, Syngenta's Community Outreach Manager, refused to provide additional general information regarding the circumstances or the employees' condition or treatment, citing the Health Insurance Portability and Accountability Act, although the HIPAA does not restrict dissemination of general information that cannot be traced to an individual.[1]

Chlorpyrifos acts on the nervous system by inhibiting acetylcholinesterase. Extensive research over many years links chlorpyrifos exposure to neurological impairment, persistent developmental disorders, autoimmune conditions, lung cancer, colorectal cancer and non-Hodgkin's lymphoma. Exposure during pregnancy can permanently retard a child's mental development. Consequently, EPA banned most home use in 2001. EPA recently proposed to revoke all food residue tolerances for chlorpyrifos because it has been unable to conclude, as the Federal Food, Drug, and Cosmetic Act requires, that aggregate exposure to the pesticide in foods and from other sources of exposure will not cause harm.

This is not the first time Syngenta has violated the Worker Protection Standard at its Kekaha operations. For example, in 2008, Syngenta was fined for failing to post the spraying of the pesticide Liberty (sulfentrazone and imazethapyr) at its central notification site, among other violations.

Hawai'i residents, and those in the West Kaua'i community in particular, are not only keenly interested in the well-being of these workers and the circumstances surrounding the incident, but have a personal stake in the issue of pesticide exposure in operations conducted by Syngenta and other agrochemical companies. West Kaua'i hosts thousands of acres of agricultural fields on which Syngenta and other companies use large quantities of dozens of restricted use, experimental, and other pesticides far more frequently than do conventional farmers. In West Kaua'i these fields surround lower-income communities of color like the town

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[1] We also note that Stephanie Iona, Director of Community Affairs and Public Outreach at Dow AgroSciences, a manufacturer of chlorpyrifos and frequent user of the pesticide in West Kaua'i, is a member of the Board of Directors of Kaua'i Region of the Hawaii Health Systems Corporation, which operates the Kaua'i Veterans Memorial Hospital.

of Kekaha, including Hawaiian homesteads, where one of the largest pure Native Hawaiian, native-speaking populations in Hawai'i is found. These companies' operations on Moloka'i and elsewhere in the state similarly affect surrounding communities of color disproportionately, and they are constantly subjecting them to pesticide drift and pesticide-laden fugitive dust.

Pesticide-contaminated waters from the West Kaua'i fields drain into forty miles of ditches—essentially open sewers—that run right through Kekaha town, where children play in them, before emptying into the nearshore waters in which community members fish and swim. When we recently viewed these ditches we saw no warnings whatsoever to stay out of them. The Hawai'i Department of Health, in its 2013-2014 State Wide Pesticide Sampling Pilot Project, found atrazine, bentazon, propiconazole, fipronil, chlorpyrifos, metalochlor, and simazine in these ditch flows, including atrazine and metalochlor at levels exceeding EPA aquatic life benchmarks. To our knowledge the Department has made no attempt to address the problem. Instead, it is assisting the Agribusiness Development Corporation, which leases these lands to the agrochemical companies, to avoid the Clean Water Act's National Pollutant Discharge Elimination System permitting requirements.

A few miles down the road at Waimea Canyon Middle School, near more of Syngenta's agricultural fields, children have repeatedly been taken to the hospital suffering symptoms of pesticide exposure. On one occasion, 60 children and at least two teachers experienced headache, dizziness, nausea, or vomiting. At least 10 children were treated at an emergency room, several were put on a nebulizer to relieve respiratory distress, and one was given an anti-vomiting medication intravenously. Air samples collected at the school—an investigation not undertaken until years after these events—revealed the presence of chlorpyrifos, metolachlor and bifenthrin. Yet the Hawai'i Department of Agriculture's investigators suggested that the children's severe headaches, nausea and disorientation—all well-known symptoms of chlorpyrifos exposure—were not due to pesticides at all, but to "stinkweed" ((*Cleome gynandra*), also known as African cabbage, spider wisp, and cat's whiskers), a plant that has been growing throughout Hawai'i for well over a century, and is used as food or for medicinal purposes in many countries.[2] We are unaware of anyone in Hawai'i or anywhere else ever having been hospitalized due to smelling stinkweed.

Such incidents have not been confined to Kaua'i. In 2007, Kahuku Intermediate and High Schools on O'ahu were closed for three days after 15 students were sickened by pesticide. In 2014, students and staff at Kahalu'u Elementary School on Maui experienced symptoms of pesticide exposure, and dozens received treatment at the hospital; the Fire Department linked the incident to reports of pesticide spraying in the area.

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[2] http://blogs.worldwatch.org/nourishingtheplanet/spider-plant-a-hardy-and-nutritious-african-native/

In the face of the Hawai'i State authorities' indifference, residents of Waimea on Kaua'i, fed up with pesticide-laden fugitive dust from these fields drifting into their yards and homes, finally were forced to file a class action lawsuit against one of the agrochemical companies, DuPont Pioneer. Last year a jury determined the company failed to follow generally accepted agricultural and management practices and awarded the plaintiffs damages. Waimea also may be the site of a cancer cluster; some 37 cases have been noted in a population of under 1,000, which appears to be far greater than the statewide rate.

Records obtained from DuPont Pioneer show that this single company applied 90 different pesticide formulations containing 63 different active ingredients on Kaua'i from 2007 to 2012. The frequency of use is extremely high; calculations based on available data suggest the agrochemical companies on Kaua'i alone likely conduct an average of 30 or more spray operations most days of the year.

The Kaua'i County Council in 2013 sought to defend these communities by passing an ordinance in 2013 that required modest pesticide buffer zones around schools, hospitals and waterways, along with notice of impending spraying so local residents could avoid exposure. Hundreds of community members testified in support, many describing these operations' health impacts on themselves and their families. For its trouble the County of Kaua'i was presented with a lawsuit by Syngenta, Dow AgroSciences, BASF, and DuPont Pioneer, which demanded the right to continue spraying pesticides near schools. The court concluded the ordinance was preempted by state law. In 2014, Maui residents gathered enough signatures to place an initiative on the ballot for a moratorium on growing the kinds of experimental genetically engineered crops that results in heavy pesticide use. Despite the agrochemical companies' multimillion-dollar opposition advertising campaign, the people of Maui passed the moratorium. On Hawai'i Island, the County Council similarly enacted an ordinance suspending expansion of such crops. The agrochemical companies sued those counties as well, and those ordinances also were invalidated. (Appeals from these three decisions are pending.)

Although these ordinances have been deemed preempted by Hawai'i law, the Hawai'i Departments of Agriculture and Health have done remarkably little to address any of the communities' concerns. Alleged pesticide-related violations are rarely addressed or even investigated. According to a 2013 report, the Department of Agriculture has only one employee assigned to review pesticide inspection reports and follow up on possible violations. As of the date of that report she had finished just seven of 72 investigations into possible violations on Kaua'i alone for 2011 and 2012.[3] Also in 2013, when asked by a Kaua'i County Council member how the Department of Health was doing enforcing dust regulations on Kaua'i, then-deputy director for environmental health Gary Gill responded: "Probably badly."[4] The jury verdict against DuPont Pioneer confirmed this, but citizens have a right to better protection from their

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[3] http://www.huffingtonpost.com/2013/10/08/kauai-county-gmo-fight_n_4064787.html
[4] *Id.*

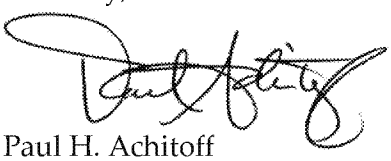
elected officials. Community efforts to gain protection through the state legislature, such as by bills seeking pesticide buffer zones or disclosure, have been completely unsuccessful; coincidentally perhaps, the agrochemical companies are among the largest campaign contributors in Hawai'i.[5]

It therefore should come as no surprise that the people of Kaua'i and of the rest of Hawai'i have no confidence that the Hawai'i Department of Agriculture's investigation of Syngenta's employees' poisonings will be thorough and objective. We, and the workers, look to your office to ensure that a proper investigation is performed and the results shared with the public. We also look to your office to ensure that the lessons learned from this incident are not wasted, and that Syngenta and others will face meaningful consequences for any violations that are found.

Specifically, we expect that your office immediately begin an investigation into this case, and a issue a full, public report of the results within two months. Given that workers may not be made available for interviews to determine the conditions at the time of this specific exposure incident—and that the Hawai'i Department of Agriculture uses forms asking pesticide users for their "voluntary consent to allow the Department of Agriculture to enter for inspection and/or sampling"—we ask that EPA conduct unannounced inspections at this location, at Syngenta Seeds locations in the future, and at other agrochemical company operations where pesticide use is similarly intense, including on Moloka'i, Maui, and O'ahu. EPA should ensure there are bilingual inspectors, and that workers are interviewed away from the work site to avoid intimidation by the employer.

Thank you for your attention and anticipated efforts.

Sincerely,



Paul H. Achitoff
Managing Attorney, Earthjustice

cc: Jim Jones, Assistant Administrator, Office of Chemical Safety and Pollution Prevention
Jack Housenger, Director, Office of Pesticide Programs
Kevin Keaney, Chief, Certification and Worker Protection Branch
Dana Friedman, Pesticide Re-Evaluation Division
Jacqueline Mosby, Director, Field and External Affairs Division
Matthew Tejada, Director, Office of Environmental Justice
Ruth Etzel, Director, Office of Children's Health Protection

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[5] http://grist.org/politics/pesticide-and-gmo-companies-spend-big-to-influence-politics-in-hawaii/